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November 22, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: *Ex Parte*
CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

In this letter, Cbeyond Communications provides further information for the Commission's consideration in the above-captioned proceedings concerning unbundled access to interoffice transport.

The Commission Should Adopt A Route and Capacity Level Specific Test For Unbundled Access to Interoffice Transport

Cbeyond supports the recent proposal of ALTS and CompTel for a granular test for determining when CLECs are impaired without unbundled access to interoffice transport.¹ That proposed granular test will assure that competitive alternatives are available to CLECs over the specific routes over which they need transport. A key feature of that proposal is that the examination of whether CLECs have meaningful market substitutes for interoffice transport would be conducted by the specific route (*e.g.*, between the ILEC tandem office and specific end offices) and by the specific capacity level (DS-1, DS-3, OC n, etc.). As demonstrated by the attached Declaration of Richard Batelaan, Vice President - Operations at Cbeyond, these two components are extremely critical to any impairment analysis or test due to the way CLECs such as Cbeyond purchase and actually use interoffice transport.

¹ Letter to William F. Maher, Jr. from H. Russell Frisby, President, CompTel and John Windhausen, President, Association for Local Telecommunications Services, WCB Docket No. 01-338, filed October 8, 2002.

Nondiscriminatory Provision of Co-Carrier Cross Connects

The Commission should also require as part of any test determining unbundled access to interoffice transport that ILECs provide nondiscriminatory access to co-carrier cross connects. The Commission has already recognized that CLECs cannot effectively compete without the ability to cross-connect in the central office with other competitive carriers, including alternative transport providers.² The Commission should assure that competitive transport providers are able to extend facilities into ILEC central offices and connect with carriers providing transport alternative transport services collocated there. Cbeyond's experience has been that all too often ILECs refuse to permit, or make it very difficult for, competitive transport providers to collocate and extend facilities into central offices. The Commission should assure that as a precondition to any easing on obligations to provide unbundled interoffice transport that ILECs must permit competitive fiber providers to extend facilities into the central office and establish a presence there that will permit ready and economical connection to CLECs.

The Commission should also establish a "best practices" approach for permitting co-carrier cross-connects. As explained in the attached Declaration of Richard Batelaan, the Commission should require all ILECs to conform to the cross-connect practices of BellSouth which generally provide for adequate provision of cross-connect services to competitive carriers. The Commission must also go further to make clear that competitive transport providers cannot be denied access to collocation space as a precondition of any lessening of ILEC unbundled interoffice transport requirements.

"Commingling" Restrictions Must Be Abolished

The Commission must also eliminate restrictions on "commingling" that thwart a CLEC's ability to include in its network, and interconnect, various elements comprised of UNEs, special access, other tariffed services, or third party provisioned facilities. Insofar as an ILEC is no longer required to provide unbundled access over a specific interoffice transport route, the CLEC must obtain a substitute in the form of special access or a third party provided facility. This, in turn, requires that the CLEC be able to connect or combine this segment to the remaining portions of the network, particularly unbundled local loops. Accordingly, the Commission must require that ILECs permit CLECs to "mix and match" various network components without restriction. Furthermore, the Commission must also assure that ILECs have in place tested and proven methods for testing interoperability between various network elements as part of any test concerning unbundled access to network elements. The Commission has ample authority to prohibit "commingling" restrictions under Sections 251(c)(3), 201(b), and 202(a) of the Act as explained in the ALTS/CompTel proposal.

² *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, CC Docket No. 98-147, FCC 01-204, released August 8, 2001, paras. 55-88.

Marlene H. Dortch
November 22, 2002
Page 3

The attached Declaration of Richard Batelaan additionally provides information to the Commission concerning how Cbeyond purchases and uses local loops and dedicated interoffice transport.

Sincerely,



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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Section 251 Unbundling)	
Obligations of Incumbent Local Exchange)	CC Docket No. 01-338
Carriers)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act of)	CC Docket No. 96-98
1996)	
)	
)	CC Docket No. 98-147
Deployment of Wireline Services Offering)	
Advanced Telecommunications Capability)	

DECLARATION OF RICHARD BATELAAN, PE

1. My name is Richard Batelaan, PE. My business address is 320 Interstate North Parkway, Suite 300, Atlanta, Georgia, 30339.
2. I am employed as Vice President—Operations by Cbeyond Communications, LLC (“Cbeyond”). I have previously held positions with BellSouth Telecommunications and Cisco Systems. I worked at BellSouth from 1987 to 1999 and my last position within BellSouth was Vice President of Operations and Chief Operations Officer (CCO) for BellSouth.net. I have held a number of positions within the BellSouth family of companies including BellSouth Telecommunications Outside Plant Engineering and Central Office Installation and Growth Supervisor, BellSouth Business Systems Director of Operations for the deployment of Frame Relay and ATM services, and BellSouth.net Director of Network Operations, Director of Engineering, and VP Operations (COO).

3. Cbeyond is a facilities-based telecommunications and broadband services provider, focused on "bridging the digital divide", through use of Internet Protocol (IP) architecture that enables it to offer a sophisticated and comprehensive package of communication services that meets the communications needs of small businesses at affordable prices typically only previously available to large enterprises. Cbeyond provides an integrated product of local, long distance, Internet access and Internet-based applications such as Unified Messaging, Email, E-Commerce and Web Hosting. Cbeyond's business strategy is to facilitate the movement of business processes via Internet access, making possible electronic communication, collaboration and e-commerce opportunities that will drive the customer's competitive strength and efficiency. Cbeyond uses an integrated IP-based architecture and delivers converged voice, data and integrated network applications over a single platform with seamless integration and delivery.

OVERVIEW AND PURPOSE OF THE DECLARATION

4. The purpose of this Declaration is to provide (1) supplemental information for the record regarding Cbeyond's use of local loops and unbundled dedicated interoffice transport provided by incumbent local exchange carriers; (2) input to the FCC with regard to the availability of alternative sources for dedicated interoffice transport routes in the Tier 1 markets where Cbeyond is operational; and (3) insight as to what is necessary for the development of a robust competitive transport market and a CLECs ability to compete under those circumstances.

5. The Federal Communications Commission ("FCC") is currently reevaluating what unbundled network elements will be made available to competitive local exchange carriers. My understanding of this evaluation is that the FCC will determine whether or not a CLEC is impaired in its ability to compete in the local market without access to certain unbundled piece

parts of the ILEC network. My declaration is not intended to address legal and statutory obligations, however, it is intended to provide data on the practical availability of both local loops and dedicated interoffice transport without continued access to these parts of network as unbundled network elements.

6. First, it is important to note that Cbeyond provides service to small business customers located in Tier 1 markets. At this time Cbeyond is operational in three cities – Atlanta, Dallas and Denver. Our acquired customer base since becoming operational in early 2001 consists of more than 4,000 very small entrepreneurial businesses that prior to Cbeyond service were served with anywhere from three to twenty five analog lines, had a separate line for internet connectivity - typically with only dial up modem connectivity.

7. Cbeyond recognized the high demand of this particular market segment for an alternative provider to the ILEC for their local and long distance voice services and also recognized the unserved need for competitively priced high speed internet connectivity. Cbeyond provides a bundled package of local and long distance voice services and symmetric always on Internet connectivity at very affordable price points previously unavailable to these customers.¹

Cbeyond's ability to cost effectively serve this segment of the business market is due to the investment and innovation it made in developing an efficient packet-based network technology and platform as well as its access to unbundled network elements made available at TELRIC prices pursuant to the Telecommunications Act of 1996.

¹ Cbeyond offers two basic packages to its customer base – Beyond Voice I for customers with 5-15 voice lines and up to 1.5 Mb of high speed internet access and Beyond Voice II for customers with 16-25 lines and up to 3.0 Mb of high speed internet access.

8. Cbeyond purchases unbundled DS1 local loops and unbundled DS3 interoffice dedicated transport from the ILEC in each of our market areas.² In certain instances and in order to expand its existing footprint in a market, Cbeyond will also use DS1 combinations or EELs, which will utilize DS1 or DS3 transport in the combination. Cbeyond's network is almost exclusively UNE based. With regard to unbundled DS1 local loops Cbeyond purchases these loops exclusively from the ILEC – there are no competitive alternatives of any type that could replace these loops. Furthermore, in serving businesses the size of Cbeyond's typical customer (6 local lines), Cbeyond can also not self provision loops to reach these customers. Thus, Cbeyond would be impaired in its ability to compete without access to DS1 unbundled loops. If these loops were no longer made available to Cbeyond, it would have to abandon the small business market currently served – the very customers who have never had a competitive alternative and certainly have never had affordable high speed internet connectivity – and begin selling to larger business enterprise customers.

9. With regard to dedicated interoffice transport, I would first like to describe how Cbeyond uses DS3 level interoffice transport. First, we purchase DS3 level transport to aggregate traffic to a common central point between collocation sites. Our transport architecture is point-to-point between our collocations in the ILEC tandem offices and our collocations in the ILEC end offices. The collocation space at the end office level is minimal and the vast majority of Cbeyond's equipment resides at the tandem collocation. I stress this point because it is imperative that when developing a test to determine whether a CLEC has alternatives to interoffice transport it is critical, particularly with a network architecture like Cbeyond's, that the

² Cbeyond also expands its footprint in each market by purchasing new combinations of unbundled DS1 loops and DS1 transport from the ILEC in offices where Cbeyond does not have a collocation.

test be performed on a route-by-route basis (between two offices), not on an individual office basis.

10. In the Tier 1 markets where Cbeyond is operational, Cbeyond today uses alternative providers for interoffice transport over some routes. The alternative provider facilities are typically used between Cbeyond's non-ILEC collocation point of presence ("POP") and the ILEC tandem office or offices where Cbeyond aggregates traffic. With regard to the transport between our tandem collocations and our end office collocations, Cbeyond almost exclusively purchases unbundled dedicated interoffice transport from the ILEC. To better understand the actual presence of alternative interoffice transport providers on the specific routes between our tandem collocation and the individual end office collocations, Cbeyond surveyed six potential providers for the Zone 1 and Zone 2 or equivalent offices in each city. Our survey results are attached to this declaration as Exhibit A.³ It should be noted that while alternatives for DS3 interoffice transport are present in each market, not all alternatives may be viable as a practical matter.⁴

11. A similar survey was also performed for DS1 level transport to determine if competitive alternatives exist in our markets for that level of interoffice capacity. The result of this study shows that alternative providers for DS1 level transport are at best nascent. Moreover, there is no basis to assume that the availability of higher-level capacity alternative transport providers over a specific route automatically means that a lower level capacity is also available over that route. Our survey found that for the routes where DS3 transport was physically available from alternative providers, that it did not necessarily mean that a lower capacity (e.g., DS1) transport

³ In gathering the information, Cbeyond also received the proposed pricing for each route from each potential provider. In almost every case the pricing exceeded ILEC *special access* pricing by one and a half to three times.

⁴ Of the six alternatives in each market there are three providers in each that are either in bankruptcy status or that have since exited the market all together.

alternative was available. Thus, it is critical that any test adopted to evaluate interoffice transport alternatives be based on the specific capacity level of the facility.

12. One of the most critical factors to being able to utilize competitive transport is the ability to get access to the transport via co-carrier cross connects. The FCC in its *Collocation Remand Order* took important and appropriate steps toward clarifying that ILECs must make co-carrier cross connects available at cost based rates. Any test adopted by the FCC that evaluates the availability of competitive alternative transport providers, must have this as a component. ILECs should not be permitted to create barriers for CLEC access to alternative providers through cross connects like what we have experienced in the past – restrictions on the alternative providers being given the ability to collocate in an office, restrictions on the type of interface (e.g., Ethernet) vs. capacity adequate to support the CLEC use, and excessive pricing estimates. Yipes Communications is a shining example of a company that had an attractive alternative product to ILEC transport and a viable business plan. Unfortunately, due to the restrictions placed by the ILECs on Yipes' ability to access central offices, CLECs had great difficulty in getting access to its alternative transport service. Thus, the company was forced to exit the market. Cbeyond submits that co-carrier cross connect must be practically available in order to build and sustain a robust competitive transport market. To that end, Cbeyond would submit that language and pricing such as that contained in our interconnection agreement with BellSouth should serve as an example of terms and conditions or a "best practice" that would facilitate access to alternative transport providers. The contract terms are attached as Exhibit B. This coupled with permissive collocation policies that do not restrict alternative transport providers access to collocation space would contribute significantly to a fully competitive and robust transport market.

13. Last, to the extent ILECs are no longer required to provide interoffice transport as an unbundled network element under any particular circumstance, it is critical that CLECs have the ability to access ILEC provisioned special access and use it in conjunction with other facilities that form part of the CLEC's service arrangements that it obtains as UNEs or from third party providers. There is no sound policy or operational basis for not permitting CLECs to "commingle", i.e., connect, or even combine ILEC unbundled loops with either ILEC provisioned tariffed services or services provided by a third party where the ILEC is the underlying provider. The FCC's rules must be perfectly clear on this point, otherwise CLECs will be precluded from access to the unbundled loops to which they are entitled. To permit ILECs to prevent CLECs from connecting or combining in its network and interconnecting UNEs, special access, and third party provided facilities would create barriers to entry and effectively close entry to the local markets that CLECs like Cleynond serve today.

14. This concludes my Declaration.

Pursuant to Section 1.16 of the Commission's rules, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of November, 2002


Richard Batelaan, PE

Exhibit A

Cbeyond Alternative Transport Study

This survey does not factor in issues such as pricing and interconnectivity that necessarily should be a part of the Commission's determination of whether an alternative was practically available in a manner necessary to alleviate impairment.

ATLANTA SURVEY Route between Bell tandem ATLAGABUCA0** and Bell CO (CLLI)	Alternative 1*	Alternative 2***	Alternative 3	Alternative 4	Alternative 5*	Alternative 6
MRTTGAMA	Yes		Yes	Yes	Yes	
NRCRGAMA	Yes		Yes	Yes	Yes	
ATLNGABU	Yes		Yes	Yes	Yes	
CHMCGAMA			Yes	Yes	Yes	
RSWLGAMA	Yes		Yes	Yes	Yes	
ATLNGAPP	Yes		Yes	Yes	Yes	
ALPRGAMA	Yes		Yes		Yes	
SMYRGAMA	Yes		Yes		Yes	
TUKRGAMA			Yes		Yes	
ATLNGACS	Yes		Yes		Yes	
ATLNGASS	Yes		Yes		Yes	
DNWDGAMA	Yes		Yes		Yes	
LRVLGACS			Yes		Yes	
ATLNGATH			Yes		Yes	
LLBNGAMA			Yes		Yes	
DLTHGAHS			Yes		Yes	
ATLNGAEP			Yes	Yes	Yes	
SMYRGAEF	Yes		Yes		Yes	
MRTTGAEA			Yes		Yes	
ATLNGAWD			Yes		Yes	

* Provider currently in bankruptcy.

** Tandem or "point A" location on the route surveyed.

*** Provider has exited the market since survey was performed.

DALLAS SURVEY Route between Bell Tandem DLLSTX97CA0**and Bell CO (CLLI)						
	Alternative 1*	Alternative 2	Alternative 3	Alternative 4	Alternative 5*	Alternative 6
DLLSTXAD	Yes		Yes	Yes	Yes	
DLLSTXRN	Yes	Yes	Yes	Yes	Yes	
DLLSTXBM	Yes		Yes	Yes	Yes	
DLLSTXVB	Yes		Yes	Yes	Yes	
DLLSTXME	Yes		Yes	Yes	Yes	
DLLSTXRI	Yes	Yes	Yes	Yes	Yes	
DLLSTXPL	Yes		Yes	Yes	Yes	
DLLSTXDI				Yes	Yes	
DLLSTXLA	Yes	Yes	Yes	Yes	Yes	
DLLSTXMC	Yes			Yes	Yes	
DLLSTXRE	Yes			Yes	Yes	
DLLSTXDV				Yes	Yes	
DLLSTXNM				Yes	Yes	
DLLSTXNO	Yes			Yes	Yes	
DLLSTXTA	Yes	Yes	Yes	Yes	Yes	
DLLSTXGP				Yes	Yes	
DLLSTXRO	Yes	Yes		Yes	Yes	
DLLSTXWH				Yes	Yes	
DLLSTXDA				Yes	Yes	
DLLSTXMS				Yes	Yes	

* Provider currently in bankruptcy.

** Tandem or "point A" location on the route surveyed.

DENVER SURVEY Route between Bell Tandem DNVRCOMACA0** and Bell CO (CLLI)						
	Alternative 1*	Alternative 2	Alternative 3***	Alternative 4	Alternative 5*	Alternative 6
DNVRCODC	Yes	Yes		Yes	Yes	
BLORCOMA		Yes			Yes	
ARVDCOMA		Yes			Yes	
DNVRCOEA	Yes	Yes		Yes	Yes	
DNVRCOMA	Yes	Yes		Yes		
DNVRCOSL	Yes	Yes		Yes	Yes	
DNVRCOCP	Yes	Yes		Yes	Yes	
DNVRCOSO		Yes		Yes	Yes	
DNVRCOSE		Yes		Yes	Yes	
DNVRCOWS		Yes			Yes	
DNVRCOSW		Yes			Yes	
DNVRCONE		Yes			Yes	
LKWDCOMA		Yes			Yes	
LNMTCOMA		Yes			Yes	
AURRCOMA		Yes			Yes	
WMNSCOMA		Yes			Yes	
DNVRCOCH	Yes	Yes		Yes	Yes	
LTTNCOMA		Yes			Yes	
BNWDCOMA		Yes			Yes	
DNVRCOCL		Yes			Yes	

* Provider currently in bankruptcy.

** Tandem or "point A" location on the route surveyed.

*** Provider has exited the market since survey was performed.

Exhibit B**Cbeyond/BellSouth Interconnection Agreement Language**

5.6. In addition to, and not in lieu of, obtaining interconnection with, or access to, BellSouth telecommunications services, unbundled network elements, and facilities, Cbeyond may directly connect to other Interconnectors within the designated Premises (including to its other virtual or physical collocated arrangements) through facilities owned by Cbeyond or through BellSouth facilities designated by Cbeyond, at Cbeyond's option. Such connections to other carriers may be made using either optical or electrical facilities. Cbeyond may deploy such optical or electrical connections directly between its own facilities and the facilities of other Interconnector(s) without being routed through BellSouth equipment.

5.6.1 If Cbeyond requests a co-Carrier cross-connect after the initial installation, Cbeyond must submit an application. The applicable nonrecurring fee in Exhibit A shall apply in lieu of any application fee. Cbeyond must use a BellSouth Certified Contractor to place the co-Carrier cross connect, except in cases where Cbeyond equipment and the equipment of the other interconnector are located within contiguous Collocation Spaces. In cases where Cbeyond's equipment and the equipment of the other interconnector are located in contiguous Collocation Spaces, Cbeyond will have the option to deploy the co-Carrier cross connects between the sets of equipment. Cable support charges shall be assessed per linear foot of support structure used. If Cbeyond elects to have BellSouth provide the co-Carrier cross-connect, BellSouth shall perform the cross-connect function at the frame, and the charges for cross-connect shall apply. Within BellSouth Premises, at Cbeyond's request, BellSouth will permit Cbeyond and other such CLECs to construct their own cross-connect facilities, and to connect to other physical CLECs using copper (or ABAM or coaxial as appropriate) or optical facilities between collocated equipment located within the same BellSouth Premises, subject only to the same reasonable safety requirements that BellSouth imposes on its own equipment. BellSouth shall provision co-Carrier cross connects to Cbeyond at parity with itself. If requested by Cbeyond and no cable rack is in place, BellSouth will provide the installation of the cable rack.

	Co-Carrier Cross-Connect (Note 3)		Recurring	NRC
PE1ES Fiber	Fiber Cable Support Structure, existing *	Per linear ft.	\$.003	\$540.00
PE1DS Copper (TBD)	Copper or Coaxial Cable Support Structure, existing*	Per linear ft.	\$.004	\$540.00
	Cable Support Structure Construction, new	Per new construction	NA	ICB

Note 3: **Co-Carrier Cross-Connect.** As stated in Section 5 of the Collocation Attachment, Cbeyond may connect to other CLECs within the designated Premises in addition to, and not in lieu of, interconnection to BellSouth services and facilities. Where BellSouth must construct a cable rack structure to house the co-Carrier cross connection, construction charges will be applied on an individual case basis as described in Section 5.6.1 of the Collocation Attachment. BellSouth shall provide an estimate of these charges in the Application Response. Where an existing cable rack structure is in place and has sufficient capacity to accommodate the co-Carrier cross-connection requested, the recurring charges as stated in this Exhibit A shall apply.

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From-

To-

Page 013